

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS AND
THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARINGS ON
ARM 12.2.501 and 12.5.201 and the)	PROPOSED AMENDMENT AND
adoption of New Rules I through V)	ADOPTION
regarding gray wolf management in)	
Montana)	

TO: All Concerned Persons

1. On July 16, 2008 at 6:00 p.m. the Department of Fish, Wildlife and Parks (department) and the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 3 offices located at 1400 South 19th Avenue, Bozeman, Montana to consider the amendment and adoption of the above-stated rules.

On July 17, 2008 at 6:00 p.m. the department and commission will hold a public hearing at the Fish, Wildlife and Parks Region 2 offices located at 3201 Spurgin Road, Missoula, Montana to consider the amendment and adoption of the above-stated rules.

On July 18, 2008 at 6:00 p.m. the department and the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment and adoption of the above-stated rules.

2. The department and commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the department and commission no later than July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail jesnyder@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, MCA, et seq.:

- (a) crayfish - *Pacifasticus* spp.;
Orconectes spp.;
- (b) freshwater mussels - all species of *Pelecypoda*;

- (c) yellow perch - *Perca flavescens*;
- (d) crappie - *Pomoxis*;
- (e) black-tailed prairie dogs - *Cynomys ludovicianus*;
- (i) under 87-5-102, MCA, department management of black-tailed prairie dogs applies to public lands only; and
- (f) white-tailed prairie dogs - *Cynomys leucurus*;
- (i) under 87-5-102, MCA, department management of white-tailed prairie dogs applies to public lands only; and
- (g) gray wolf - *Canis lupus*.
- (2) remains the same.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

12.5.201 ENDANGERED SPECIES LIST (1) The following endangered species list is established in accordance with Title 87, chapter 5, MCA. Except as otherwise provided, it is unlawful for any person to take, possess, transport, export, sell or offer for sale, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following list:

- (a) whooping crane (*grus americana*); and
- ~~(b) Northern Rocky Mountain wolf (*canis lupus irremotus*); and~~
- ~~(c)~~(b) black-footed ferret (*mustela nigripes*).

AUTH: 87-5-107, 87-5-131, MCA

IMP: 87-5-107, 87-5-131, MCA

4. Wolf recovery in Montana began in the 1980s. The gray wolf increased in number and expanded its distribution in Montana because of natural emigration from Canada and a successful federal effort in 1995 that reintroduced wolves into Yellowstone National Park and central Idaho.

In 1987, the United States Fish and Wildlife Service (USFWS) adopted a Northern Rocky Mountain Wolf Recovery Plan. The recovery plan, prepared by the USFWS with the Northern Rocky Mountain Recovery Team, stated its recovery goal of "securing and maintaining a minimum of 10 breeding pairs of wolves in each of the three recovery areas for a minimum of three successive years." The recovery areas are the Greater Yellowstone recovery area, Northwestern Montana recovery area, and central Idaho recovery area. The 1994 USFWS Environmental Impact Statement on the Reintroduction of Gray Wolves to Yellowstone National Park and central Idaho revisited and revamped the Northern Rocky Mountain recovery goal to thirty or more breeding pairs and comprising some 300 or more wolves in a metapopulation. Genetic exchange between subpopulations in the recovery areas allows a high probability of long-term persistence.

In 2002, the Northern Rocky Mountain gray wolf population met the biological goals set out in the recovery plan and the 1994 Final EIS on the Reintroduction of

Gray Wolves to Yellowstone National Park and Central Idaho. 73 Fed. Reg. 10514, 10515. Gray wolves continue to thrive and expand in number and distribution in Montana.

Montana engaged in an extensive, public stakeholder process to develop its policy on the recovery, management, and conservation of wolves. In 2003, Montana adopted the Final EIS and Gray Wolf Conservation and Management Plan (plan) that would allow the state to manage wolves consistent with its state laws, policies, rules, and regulations. In the plan, Montana recognized gray wolves as a native species and committed to the long-term maintenance of a recovered population of wolves in Montana.

In 2005, Montana entered a memorandum of understanding (MOU) that allowed it to implement its USFWS-approved plan within the federal law and guidelines in place at the time. The MOU allowed Montana and the Indian Tribes to lead wolf conservation and management activities within their respective boundaries. In its 2007 Annual Report, Montana reported over 420 wolves in about 73 packs and 39 breeding pairs, with demonstrated distribution among Montana's portion of all three Northern Rocky Mountain subpopulations.

On March 28, 2008, the USFWS designated and removed from the Endangered Species Act the Northern Rocky Mountain gray wolf distinct population segment (DPS). Section 87-5-131, MCA, authorizes the department to remove the wolf from the state list of endangered species once the USFWS removed the Northern Rocky Mountain gray wolf from the federal list of endangered or threatened wildlife and upon a determination by the department that the gray wolf is no longer endangered.

With these rules, the department makes the determination that the gray wolf is no longer endangered in Montana because: wolves are thriving within the state well above the numerical recovery goals; the states of Montana, Idaho, and Wyoming and the USFWS documented distribution among the three subpopulations; and Montana's regulatory mechanisms protect a recovered wolf population. These rules mirror the guidelines that the commission adopted in April 2008 (which are essentially identical to the 10(j) experimental area regulations that were in place in southern Montana prior to the wolf's delisting), and are based on years of state management pursuant to an interagency agreement and federal requirements. The department has information relating to the wolf population, its distribution, its habitat needs, its limiting factors, and other biological and ecological data to determine management measures necessary for the wolf's continued ability to sustain itself successfully.

5. The proposed new rules provide as follows:

NEW RULE I COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident wildlife species, and is dedicated

to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pair, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pair, the department will allow only conservative management of the wolf populations so that the number of breeding pair does not go below 10. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive management considerations. The commission has authority to adopt a hunting season with quotas for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE II DEFINITIONS The following definitions apply to this subchapter:

(1) "Adaptive management" means a model for wolf conservation and management strategies; changes in the number of packs determined through a monitoring program directs selection of more conservative or liberal management strategies; model incorporates resource objectives, monitoring protocols, evaluation of predicted outcomes, and a decision process.

(2) "Agency" means the Department of Fish, Wildlife and Parks or another agency of the government authorized by the Department of Fish, Wildlife and Parks.

(3) "Attacking or killing" means the actual biting, wounding, grasping, or killing of livestock or domestic dogs.

(4) "Breeding pair" means an adult male and an adult female wolf that have produced at least two pups that survived until December 31 of the year of their birth, during the previous breeding season.

(5) "Confirm that a wolf killed the livestock" means an incident where USDA Wildlife Services conducts a field investigation of dead or injured livestock, at the request of the producer; depredation is confirmed in cases where there is reasonable physical evidence that an animal was actually attacked and/or killed by a wolf. The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eye witness accounts of the attack may help identify the specific species or individual

responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.

(6) "Habituated" means readily visible in close proximity to people or structures on a regular basis; not threatened by close proximity and may even be attracted to human presence or human food sources; extremely rare behavior in wild wolves, but typical behavior for released captive wolf or wolf-dog hybrid; for wolves, may or may not involve food conditioning.

(7) "Intentional harassment" means the deliberate and preplanned harassment of a wolf, including by less than lethal munitions, such as 12 gauge shot gun rubber bullets and bean bag shells, that are designed to cause physical discomfort and temporary physical injury but not death.

(8) "Livestock" means cattle, calf, hog, pig, horse, mule, sheep, lamb, llama, goat, herding/guarding animals, rhea, emu, and ostrich.

(9) "Opportunistic hazing in a noninjurious manner" means harassment without the conduct of prior purposeful actions such as yelling and radio activated noise makers.

(10) "Threatening to kill" means the actual chasing, testing, molesting, harassing of livestock or livestock herding/guarding animals that would indicate to a reasonable person that an attack was imminent.

(11) "USDA Wildlife Services" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE III CONTROL METHODS OF THE GRAY WOLF INCLUDES NONLETHAL AND LETHAL MEANS (1) These rules address when and how the department may carry out nonlethal and lethal control of wolves.

(2) The department may take control actions; pursuant to an interagency agreement, may authorize USDA Wildlife Services to undertake control actions; or pursuant to a future agreement, may authorize the Department of Livestock to undertake control actions. The department is solely responsible for any lethal control decision and ultimately for the status of the gray wolf population.

(3) Control of the gray wolf by agency or by individual includes nonlethal and lethal actions. The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location.

(4) The department shall take an incremental approach to lethal control.

(5) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-1-125, 87-5-106, and 87-5-111, MCA.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE IV ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF (1) Control of the gray wolf includes a variety of nonlethal management activities intended to decrease risk of, prevent, or resolve a conflict without killing the wolf in question. Allowable nonlethal control activities include:

- (a) husbandry practices including but not limited to electric fencing, increased human presence, fladry, herding or guarding animals, night pens, shed lambing, carcass removal, alternative pastures, amended pasture rotations, or supplemental feed;
- (b) placement of a radio collar to facilitate increased monitoring of the pack;
- (c) opportunistic hazing in a noninjurious manner; and
- (d) intentional harassment.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE V ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF (1) On a case-by-case basis, the department allows only the following lethal control of the gray wolf:

- (a) agency control;
- (b) livestock owner, immediate family members, or employees with permit;
- (c) killing of a wolf that is attacking, killing, or threatening to kill a person or livestock; and
- (d) control to protect human safety.

(2) The department may authorize lethal control of problem wolves, after considering the number of breeding pair within the state.

(3) Before authorizing lethal control of a gray wolf for livestock conflict:

(a) the department or USDA Wildlife Services shall conduct the following investigation:

(i) A livestock owner may call the department or USDA Wildlife Services to conduct an investigation of injured or dead livestock.

(ii) The department or USDA Wildlife Services will conduct a field investigation to determine if the death of the livestock was due to natural causes or a predator.

(iii) If a predator killed the livestock, the department or USDA Wildlife Services examines the evidence at the scene to determine if a wolf was responsible.

(b) If the department or USDA Wildlife Services confirm that a wolf killed the livestock, the department seeks input from USDA Wildlife Services and the livestock owner to decide the best course of action. The department may authorize lethal control, assessing each conflict on a case-by-case basis and after considering the following factors:

- (i) pack size and pack history of conflict;
- (ii) livestock operation;
- (iii) age and class of livestock killed;
- (iv) location of conflict;
- (v) potential for future conflict;
- (vi) status and distribution of prey;
- (vii) season; and
- (viii) number of breeding pair within the state.

(4) The department has the discretion to lethally remove a gray wolf if the department determines that the wolf is bold, food conditioned, habituated to humans or livestock, demonstrates behavior patterns indicative of a wolf-dog hybrid or of captive origin, or if it poses an immediate or ongoing threat to human safety.

(5) Pursuant to 87-5-109, MCA, the director of the department may permit killing, possessing, transporting, or exporting of a wolf for scientific, zoological, or educational purposes.

(6) The department may remove a sick, injured, or diseased wolf.

(7) The department may authorize a livestock owner, immediate family members, or employees by permit to take a wolf under the following circumstances:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; or when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;

(b) the department has authorized USDA Wildlife Services to implement lethal control to resolve conflict;

(c) the department determines that the wolf was not purposefully or intentionally fed or baited to a site;

(d) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage or wolves are a significant risk to livestock;

(e) the permit expires when the total desired number of wolves are removed by the combined action of the department, USDA Wildlife Services, and individuals named on the permit, or at the end of the 45 days, whichever is first; and

(f) within 24 hours, a person must report to the department killing or injuring a wolf under a permit.

(8) As allowed by 87-3-130, MCA, a person may kill a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. This person shall notify the department within 72 hours, preserve the scene, and leave the carcass where it was killed until the department or USDA Wildlife Services investigate the scene, and surrender the carcass to the department.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

6. While the gray wolf was federally protected under the Endangered Species Act, two sets of federal regulations governed control of the wolf to resolve wolf-livestock conflicts. Upon delisting, state plans and laws replaced the federal regulatory scheme. These rules codify the regulations and guidelines that Montana has used to control wolves since it gained management authority through an agreement with the USFWS and are consistent with Montana's plan. Codified rules require consistency in how the department and individuals may approach control of the gray wolf. The department will still take an incremental approach to lethal control of the wolf and will address conflicts on a case-by-case basis by closely matching the conflict to the response both in time and location.

The gray wolf is currently listed under Montana's Nongame and Endangered Species Conservation Act. These administrative rules change the wolf's classification to a nongame species in need of management. The department has the authority to manage the gray wolf as resident wildlife pursuant to its conservation and management plan and pursuant to statute and regulation. Montana's wolf conservation and management plan is based on the work of a diverse stakeholder group. The plan outlines an adaptive management approach that ensures the long-term success of wolf recovery in a landscape where people live, work, and recreate. The plan recognizes the gray wolf as a native species and part of Montana's wildlife heritage. It allows the wolf to find its place on the landscape, similar to other wildlife, and addresses and resolves conflicts. The plan outlines an incremental approach to lethal control.

In February, the commission adopted Interim Guidelines to Resolve Wolf-Livestock Conflicts and to Ensure Human Safety. The guidelines mirrored the federal 10(j) regulations that applied in southern Montana. These rules formally adopt the commission guidelines and federal 10(j) regulations into Montana administrative rule. These rules take the substance of the commission guidelines and the 10(j) regulations as they applied to southern Montana and put them into administrative rule format for the state.

7. Concerned persons may submit their data, views, or arguments concerning the proposed amendment and adoption in writing to Wildlife Division, Wolf ARM Public Comment, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to fwpwld@mt.gov. Any comments must be received no later than July 25, 2008.

8. Quentin Kujala or another hearings officer appointed by the department, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on June 13, 2008 by phone and a copy of this notice was mailed on June 16, 2008.

/s/ Susan W. Daly

Susan W. Daly
Acting Director
Department of Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

/s/ Martha Williams

Martha Williams
Rule Reviewer
Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 16, 2008